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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Morton Beroza

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USDA, ARS, OTT
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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/803,121	Applicant(s) BEROZA, MORTON	
	Examiner David J. Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 5-31-06 and this action is final.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,056,535 to Grimes et al. in view of U.S. Patent No. 6,543,181 to Baker et al. or Grimes et al. in view of U.S. Patent No. 6,585,990 to Huang.

Referring to claims 18, 21 and 23, Grimes et al. discloses a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container – at 10,14, having a top surface, a bottom surface and side walls – see for example figure 2, having a composition of at least one volatile liquid attractant – at 11, for targeting at least one flying insect species, and a first opening – proximate 16 in the top of the container – see for example figure 2 to receive an adjustable wick – 16, frictionally inserted into the first

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opening of the container – see for example figure 2, wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission – see for example figure 2, and a second opening – proximate 14a, in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid – see for example figure 2, wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant – see for example figure 2. Further, the Grimes et al. reference discloses hanging the device – see at 13 in figure 1. Grimes et al. does not disclose a volatile liquid attractant that is specific for one targeted flying insect species. Baker et al. does disclose volatile liquid attractant that is specific for one targeted flying insect species – see column 2 lines 62-67 and column 2 lines 1-34 where the specific one targeted insect is fruit flies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al. and add the volatile liquid attractant being specific for one targeted flying insect species of Baker et al., so as to allow for the device to only eradicate the selected species of animals intended by the device. Further, the Huang reference discloses volatile liquid attractant that is specific for one targeted flying insect species – see column 3 lines 39-48 where the targeted insect is houseflies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al. and add the volatile liquid attractant being specific for one targeted flying insect species of Huang, so as to allow for the device to only eradicate the selected species of animals intended by the device.

Claims 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes et al. as modified by Huang as applied to claims 18 and 21 above.

Referring to claims 19 and 22, Grimes et al. as modified by Huang further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example at 3,11 in figure 1a and column 5 lines 48-63 of Huang.

Claims 18-19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,254,948 to Kubalek in view of Baker et al. or Kubalek in view of Huang.

Referring to claim 18, 21 and 23, Kubalek discloses a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container – at 10,13,14, having a top surface, a bottom surface and side walls – see for example figures 1-2, having a composition of at least one volatile liquid attractant – at 12,23, for targeting at least one flying insect species, and a first opening – proximate 11, in the top of the container – see for example figures 1-2, to receive an adjustable wick – at 11, frictionally inserted into the first opening of the container – see for example figures 1-2, wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission – see for example figures 1-2, and a second opening – at 19 or 20, in the top of the container, smaller than the first opening and large enough to prevent film closure by a liquid – see for example figures 1-2, wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant – see for example figures 1-2 page 1 column 2 lines 34-37 of Kubalek. Further, the Kubalek reference discloses hanging the device – see at 21-22. Kubalek does not disclose a volatile liquid attractant that is specific for one targeted flying insect species. Baker et al. does disclose volatile liquid attractant that is specific for one targeted flying insect

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species – see column 2 lines 62-67 and column 3 lines 1-34 where the specific one targeted insect is fruit flies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kubalek and add the volatile liquid attractant being specific for one targeted flying insect species of Baker et al., so as to allow for the device to only eradicate the selected species of animals intended by the device. Further, the Huang reference discloses volatile liquid attractant that is specific for one targeted flying insect species – see column 3 lines 39-48 where the targeted insect is houseflies. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kubalek and add the volatile liquid attractant being specific for one targeted flying insect species of Huang, so as to allow for the device to only eradicate the selected species of animals intended by the device.

Referring to claims 19 and 22, Kubalek as modified by Baker et al. further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example figure 2 and page 1 column 2 lines 26-37 of Kubalek.

Referring to claims 19 and 22, Kubalek as modified by Huang further discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick – see for example figure 2 and page 1 column 2 lines 26-37 of Kubalek.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grimes et al. as modified by Baker et al. or Grimes et al. as modified by Huang as applied to claim 18 above, and further in view of U.S. Patent No. 2,176,345 to Hurwitt. Grimes et al. as modified by Baker et al. and Grimes et al. as modified by Huang further disclose the first opening – proximate 16 of

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Grimes et al., being of a size to frictionally hold a wick – at 16 of Grimes et al. – see for example figure 2 of Grimes et al., and the second opening – proximate 14a of Grimes et al., is elongated and narrower than the first opening – see for example figure 2 of Grimes et al. Grimes et al. as modified by Baker et al. and Grimes et al. as modified by Huang do not disclose the first and second opening form a single opening. Hurwitt does disclose the first opening – at 22 as seen in figure 1, and the second opening – at any of items 24 as seen in figure 1, form a single opening – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of or Grimes et al. as modified by Baker et al. or Grimes et al. as modified by Huang and add the first and second opening forming a single opening of Hurwitt, so as to allow for the liquid to be quickly absorbed by the wick and dispense the liquid.

Response to Arguments

3. Regarding claims 18, 21 and 23, the Grimes et al. reference US 1056535 does disclose a trap comprising a device/method for providing uniform emission of a flying insect attractant, consisting of a container – at 10,14, having a top surface, a bottom surface and side walls – see for example figure 2, having a composition of at least one volatile liquid attractant – at 11, for targeting at least one flying insect species, and a first opening –proximate 16 in the top of the container – see for example figure 2 to receive an adjustable wick – 16, frictionally inserted into the first opening of the container – see for example figure 2, wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission – see for example figure 2, and a second opening – proximate 14a, in the top of the

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container, smaller than the first opening and large enough to prevent film closure by a liquid – see for example figure 2, wherein the second opening maintains air pressure in the container wherein the container emits the at least one volatile attractant for at least about six months without replenishment of the attractant – see for example figures figure 2. Further, the Grimes et al. reference discloses hanging the device – see at 13 in figure 1. Further, the Grimes et al. reference discloses the wick – at 16, being adjustable in that the wick can be moved through the opening in the top of item – 14, as seen in figure 2 to adjust the depth of the wick inside the container – at 10 with the wick extending into a liquid as seen in figure 5. Further, the Grimes et al. reference discloses an attractant – at 11 being water, which is combined with a volatile composition – at 17 as seen in page 1 lines 34-84. Further, the Baker et al. reference US 6543181 is used to disclose a volatile attractant used for only one type of flying insect being a fruit fly – see column 2 lines 62-67 and column 3 lines 1-34. The Baker et al. reference is not used to disclose an adjustable wick frictionally inserted into a first opening of a container with portions of the wick being exposed to an atmosphere with the exposed wick area being increased or decreased over time to maintain a uniform rate of emission. The Grimes et al. reference is used to disclose these structural features. Therefore these arguments are moot. Further, the combination of the Grimes et al. and Baker et al. references would control the release rate of the volatile attractant by the absorption rate of the wick material – at 16 of Grimes et al. which would absorb the liquid at the rate for the particular material of the wick to allow the volatile composition to be exposed to insects. The device of Grimes et al. as modified by Baker et al. is capable of being operated for at least 6 months given the amount of liquid used and the absorption rate of the wick material. Further, the device of Grimes et al. as modified by Baker et

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al. discloses an open ended container as seen at the opening in the top of the container – at 14 as seen in figure 2 of Grimes et al.

The Huang reference US 6585990 discloses a volatile liquid attractant that is specific for one targeted flying insect species – see column 3 lines 39-48 where the targeted insect is houseflies. The Huang reference is not used to disclose an adjustable wick. The Grimes et al. reference is used to disclose the adjustable wick as seen above in this paragraph of this office action. The motivation to combine the Grimes et al. and the Huang references is deemed proper given the motivation to combine the references given above in paragraph 2 of this office action with the motivation to combine the references being found in the general knowledge of those of ordinary skill in the art.

Regarding claims 18, 21 and 23, the Kubalek reference US 2254948 discloses a frictionally adjustable wick – at 11 as seen in figure 2, which is held in place via frictional engagement with the lid – at 14 as seen in figure 2 and the wick – at 11 is adjustable in that the amount of the wick located inside and outside the container – at 16, can be manipulated and adjusted. Further, the Kubalek reference discloses the device can last indefinitely as seen in column 2 lines 34-37 and therefore can be made to operate for at least 6 months. Further, the device of Kubalek is open ended as seen – at the openings at 18-20 in figure 1. The combination of the Kubalek reference with either of the Baker et al. or Huang reference is deemed proper given the motivation to combine the references given above in paragraph 2 of this office action with the motivation to combine the references being found in the general knowledge of those of ordinary skill in the art.

Regarding the rejections of claim 20 using the Hurwitt reference US 2176345 applicant relies upon the same arguments set forth with respect to claims 18, 21 and 23 using the Grimes et al. reference in view of the Baker et al. reference or the Grimes et al. reference in view of the Huang reference. Therefore see the response to these references above in this paragraph of this office action.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

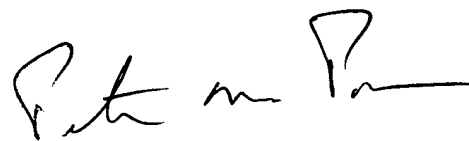
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

6/12/06